

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Accelerating of Broadband Development)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

REPLY COMMENTS OF CITY OF MARYLAND HEIGHTS, MISSOURI

The City of Maryland Heights, Missouri files these reply comments in response to the Notice of Inquiry ("NOI"), released April 7, 2011, in the above-entitled proceeding and to clarify the record regarding certain undocumented and untrue allegations made against the City of Maryland Heights by *AT&T*.

Maryland Heights Athletic Association operates a private recreational complex on a 10.61 acre site located on the northwest side of Fee Fee Road north of Midland Avenue (2805 Fee Fee Road and 11358 DeRuntz Avenue) in the City of Maryland Heights, Missouri.

The athletic fields have been in operation since the late 1960s. In 1965, St. Louis County granted a Conditional Use Permit to Maryland Heights Welfare Association to operate recreational land uses on the site.

Upon incorporation by the City of Maryland Heights and with the adoption of the Zoning Code, the site was zoned "R-5" Single-Family Residential District. As the site was developed prior to the adoption of the Zoning Code, it does not conform to all of the standards of the Code and is therefore subject to the provisions of Section 25-7, Nonconforming Lots, Structures, and Uses of the Zoning Code.

On June 12, 2009 *Network Real Estate, LLC* filed a Conditional Use Permit application on behalf of *AT&T Mobility* to replace an existing light standard with one capable of accommodating wireless communication antennas at this location.

On June 12, 2009, the City Planner notified the applicant that the application and supporting documents were incomplete for hearing, based on the submittal requirements of Sections 25-5, Conditional Use Permits, and 25-27, Wireless Communication Regulations, of the Zoning Code.

Upon receipt of additional but insufficient information from the applicant, the City Planner notified the applicant that the project remained incomplete for hearing on June 16, 2009.

Upon receipt of the required information from the applicant, the City Planner notified the applicant that the project was complete for hearing on June 22, 2009.

The public hearing was held on July 14, 2009 to consider the existing athletic fields and a light standard capable of accommodating wireless communication antennas. At the public hearing, a number of outstanding issues were identified. Subsequent to the hearing, on July 16, 2009, the City Planner notified the applicant that these issues had to be addressed prior to a recommendation by the Planning Commission. These issues included: the location of the tower and compound in relation to the stream buffer regulations, camouflaging of the antennas, landscaping and screening of the cabinet, the required drive-aisle and parking surface, and the proposed fencing in relation to the athletic fields.

The applicant requested that the public hearing be continued in order to address the issues identified.

On October 10, 2009, the applicant's attorney, John P. King, sent a letter indicating that the applicant would be prepared to proceed on November 10, 2009.

Given the length of time between the initial public hearing and the second public hearing, the Planning Commission required (under Section 25-3.7 of the Zoning Code) that the case be re-advertised in a newspaper and that the surrounding properties be re-notified by mail.

The second public hearing was held on November 10, 2009.

At the Planning Commission's next meeting, held December 8, 2009, the City Planner presented a draft ordinance for approval with conditions. After some discussion, the Planning Commission directed staff to meet with the applicant and Maryland Heights Athletic Association to reach an agreement on access, parking, and fencing concerns.

Staff met with the applicant and Athletic Association on December 14, 2009.

At the Planning Commission's next meeting, held January 12, 2010, the City Planner presented the revised draft ordinance to the Planning Commission. The Planning Commission recommended approval of the draft ordinance.

On January 18, 2010, Jeffrey D. Allen (agent for AT&T Mobility) and Ralph Dannegger (president of the Maryland Heights Athletic Association) signed that they read the ordinance and agree to comply with all of the provisions and conditions contained therein.

On January 21, 2010, the City Council adopted Conditional Use Permit Ordinance #2010-3344. The ordinance permits wireless communication antennas and the existing athletic fields subject to limitations and conditions. The ordinance requires the property to be brought into conformance with the Zoning Code with regard to the required parking surface, screening of trash enclosures and outdoor storage, and signage prior to the issuance of any building permits.

On February 22, 2010, the applicant revised their plans and submitted them to satisfy the Final Site Plan requirements under the ordinance. On March 11, 2010, the City Planner sent the applicant review comments.

On August 16, 2010, the applicant revised their plans and subsequently submitted them for review. On September 27, 2010, the City Planner sent the applicant review comments.

On September 30, 2010, the applicant submitted revised plans which were found to comply with the ordinance. On November 11, 2011, the Final Site Plan was approved and transmitted to the applicant, fulfilling the administrative requirements of the ordinance.

The applicant has not applied for a building permit.

In summary, AT&T's allegations that the City tried to get AT&T to pay for development of a private ballpark as part of condition for approval are false. AT&T agreed to the ordinance conditions prior to their adoption. The City has already approved the Final Site Plan and is awaiting submittal of a building permit application, which has not yet been filed by AT&T.